

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1902.

No. 1226.

169

THE NATIONAL UNION, A CORPORATION, APPELLANT,

vs.

ELLA J. BENNET AND CARRIE M. BENNET.

**APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.**

FILED JUNE 19, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1902.

No. 1226.

THE NATIONAL UNION, A CORPORATION, APPELLANT,

vs.

ELLA J. BENNET AND CARRIE M. BENNET.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE NATIONAL UNION, a Corporation, Appellant, }
vs. } No. 1226.
ELLA J. BENNET ET AL.

a Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET, }
Plaintiffs, } No. 44405. At Law.
vs. }
NATIONAL UNION, a Corporation, Defendant. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit :

1 Declaration.

Filed January 3, 1901.

In the Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET, }
Plaintiffs, } At Law. No. 44405.
vs. }
NATIONAL UNION, a Corporation, Defendant. }

The plaintiffs, Ella J. Bennet and Carrie M. Bennet, sue the defendant, The National Union, for that heretofore, to wit, on the 26th day of May, 1900, and for a long time prior thereto, the said defendant was a corporation organized under the laws of the State of Ohio, and that said defendant was and is a secret order formed and conducted for the mutual benefit of its members and their families and has subordinate councils in the different States, Territories, and districts within the United States, which said councils are a part of the general organization and carry on its business in the respective localities where they are organized; that heretofore and prior to the said 26th day of May, 1900, the said defendant established a local council in the District of Columbia known as the Government Printing Office council, No. 211, National Union, and the said defendant on said date was and still is doing business in said District;

that heretofore, to wit, on or about the said 26th day of May, 1900, one Jeremiah H. H. Bennet, husband and son, respectively, of the said plaintiffs, became a member of the said Government Printing Office council, No. 211, National Union, and received a benefit certificate, numbered 95293, whereby the said defendant promised and agreed to pay to Ella J. Bennet and Carrie M. Bennet, the wife (now widow) and mother, respectively, of said Jeremiah H. H. Bennet, upon the payment by said Jeremiah H. H. Bennet to the said defendant of all assessments and dues made and required, and upon his death, while a member of said council, the sum of three thousand (\$3,000) dollars, as will appear from said benefit certificate, ready to be produced in court at the trial hereof; that said Jeremiah H. H. Bennet during his lifetime paid all and every assessment and dues made and demanded by said National Union against and from said Jeremiah H. H. Bennet as a member as aforesaid, as required by said benefit certificate, which payments were *accepted* by said defendant on account of said certificate; that heretofore, to wit, on or about the 30th day of October, 1900, the said Jeremiah H. H. Bennet died, leaving him surviving the plaintiffs, he being at the time of his death a beneficial member of said council, and said benefit certificate being in full force and effect; that after the death of said Jeremiah H. H. Bennet, whereof the said defendant had full knowledge through its officers, the plaintiffs demanded the amount due them as the beneficiaries named in said certificate, but the defendant refused and still refuses to pay the same or any part thereof. Wherefore the plaintiffs bring this suit and claim the sum of three thousand (\$3,000) dollars, with interest thereon, besides costs of this suit.

T. L. JEFFORDS,
GEO. P. CHASE,
Attorneys for Plaintiffs.

3 The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

T. L. JEFFORDS,
GEO. P. CHASE,
Attorneys for Plaintiffs.

Plea.

Filed February 15, 1901.

In the Supreme Court of the District of Columbia.

ELLA J. BENNET, CARRIE M. BENNET, Plain-	}	At Law. No. 44405.
tiffs,		
vs.		
NATIONAL UNION, a Corporation, Defendant.		

For a plea to the said plaintiffs' declaration the defendant says and shows that the said benefit certificate mentioned in the plain-

tiffs' declaration was issued to the said Jeremiah H. H. Bennet in consideration of the covenants and agreements made by the said Bennet in his written application to become a member of this defendant's association and of the Government Printing Office council, and that the said written application is expressly made a part of said benefit certificate and a copy of said application is attached to said benefit certificate.

4 And this defendant further shows that among the covenants and agreements in said application contained to be kept and performed by said Jeremiah H. H. Bennet is one in words as follows: "I further agree that no benefit whatever shall be paid upon my death should I commit suicide within two years after becoming a beneficial member, whether at the time of committing suicide I shall be either sane or insane."

And defendant further shows that, to wit, on or about the 29th day of October, A. D. 1900, the said Jeremiah H. H. Bennet did commit suicide, which date was within the two years of the time he became a beneficial member of the defendant's association, by reason whereof all liability of this defendant to the said plaintiffs and to said Jeremiah H. H. Bennet ceased and determined; and of this the defendant is ready to verify.

CHAS. J. KAVANAGH,
WILLIAM B. REILLY,
Attorneys for Defendant.

Joinder in Issue.

Filed February 19, 1901.

In the Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET,	}	At. Law. No. 44405.
Plaintiffs,		
vs.		
NATIONAL UNION, a Corporation, Defendant.		

5 The plaintiffs join issue upon the defendant's pleas filed herein.

TRACY L. JEFFORDS,
GEO. P. CHASE,
Attorneys for Plaintiffs.

Memorandum.

April 9, 1902.—Verdict for plaintiffs for \$3,000.00, with interest from January 3, 1901.

Supreme Court of the District of Columbia.

FRIDAY, April 25, 1902.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * *

ELLA J. BENNET and CARRIE M. BENNET, Plaintiffs, } No. 44405.
vs. }
 NATIONAL UNION, a Corporation, Defendant. } At Law.

Upon consideration of defendant's motion for a new trial filed herein by its attorneys, Messrs. Wm. B. Reilly and Charles J. Kavanaugh, it is ordered that the same be hereby overruled and judgment on verdict ordered. Therefore it is considered and
6 adjudged that the plaintiffs herein recover of the defendant herein the sum of three thousand dollars (\$3,000), with interest thereon from the 3d day of January, 1901, being the money as aforesaid found payable by said defendant to said plaintiffs by reason of the premises, together with their costs of suit, to be taxed by the clerk, and have execution thereof.

From the foregoing judgment the defendant, by its attorneys, in open court notes an appeal to the Court of Appeals of the District of Columbia, and prays that a bond, to operate as a supersedeas, be fixed; thereupon it is ordered that the defendant be required to file a supersedeas bond on such appeal in the sum of five thousand (\$5,000.00) dollars, with surety or sureties, to be approved by this court.

Notice of Appeal, &c.

Filed April 26, 1902.

In the Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET }
vs. } At Law. No. 44405.
 THE NATIONAL UNION, a Corporation. }

The clerk will note an appeal to the defendant from the judgment against said defendant, entered in this cause on the 25th day of April, A. D. 1902, and will issue citation to the plaintiffs, as appellee-.

WILLIAM B. REILLY,
CHAS. J. KAVANAGH,
Attorneys for Defendant.

7 In the Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET }
vs. } At Law. No. 44405.
 NATIONAL UNION, a Corporation. }

The President of the United States to Ella J. Bennet and Carrie M. Bennet, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant

to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 26th day of April, 1902, wherein The National Union, a corporation, is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 26th day of April, in the year of our Lord one thousand nine hundred and two.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 26th day of April, 1902.

T. L. JEFFORDS,
GEO. P. CHASE,
Attorneys for Appellee.

8 *Memorandum.*

May 16, 1902.—Appeal bond filed.

Supreme Court of the District of Columbia.

THURSDAY, June 5, 1902.

Session resumed pursuant to adjournment.
Hon. H. M. Clabaugh, justice, presiding.

* * * * *

ELLA J. BENNET and CARRIE M. BENNET, Plaintiffs, <i>vs.</i> NATIONAL UNION, Defendant.	}	No. 44405. At Law.
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Comes here again the defendant herein, by its attorneys, and presents to the court its bill of exceptions taken at the trial of this cause, and prays that it may be duly signed, sealed and made part of the record now for then, which is accordingly done.

9 *Bill of Exceptions.*

Filed June 5, 1902.

In the Supreme Court of the District of Columbia.

ELLA J. BENNET and CARRIE M. BENNET, Plaintiffs, <i>vs.</i> NATIONAL UNION, Defendant.	}	At Law. No. 44405.
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Be it remembered that the above-entitled cause came on for trial on the 8th day of April, 1902, before Mr. Justice Clabaugh and a

jury, Messrs. Tracy L. Jeffords and Geo. P. Chase representing the plaintiffs and Messrs. William B. Reilly and Charles J. Kavanagh representing the defendant. Thereupon the plaintiffs, to maintain the issue on their part joined, introduced in evidence benefit certificate No. 95293 of the National Union, bearing date the 26th day of May, 1900, certifying that Jeremiah H. H. Bennet was a beneficiary member of Government Printing Office council, No. 211, National Union, located at Washington, D. C., and that "This certificate is granted upon the express condition that all statements and representations made by said member in his application for membership in said council, and all statements made to the medical examiner by him, are true, and upon the further condition that this friend complies in the future with the laws, rules and regulations controlling said benefit fund or that shall hereafter be enacted by the senate to govern said council and fund. The application of the member, a copy of which is hereto attached, is hereby made a part of this certificate. If these conditions are faithfully complied with, the

10 National Union hereby promises and agrees to pay out of its benefit fund to Ella J. Bennet and Carrie M. Bennet, 'wife and mother,' three thousand dollars, pursuant to the provisions of the laws of the order governing said fund upon sufficient proof of the death of the said friend, and upon the surrender of this certificate, provided, always, that the said friend shall be in good standing in this order at the time of death, and provided that the same be realized from assessments made upon the members."

In the said application, a copy of which is attached to the said benefit certificate, the said Jeremiah H. H. Bennet agreed "to make punctual payments of all dues and assessments for which I may become liable, and conform in all respects to the laws, rules, and usages of the order now in force or which may hereafter be adopted by the same. I further agree that no benefit whatever shall be paid upon my death should I commit suicide within two years after becoming a beneficial member, whether at the time of committing suicide I shall be either sane or insane."

Thereupon the plaintiffs proved that the said Jeremiah H. H. Bennet died on the 30th day of October, 1900.

Thereupon the plaintiff proved by admissions in open court of the counsel for the defendant that the said benefit certificate was regularly issued by the defendant to the said Jeremiah H. H. Bennet, that all assessments and dues payable by him to the said defendant had been punctually and duly paid, and that he had conformed in all respects to the laws, rules, and usages of the order, that he was
11 in good standing at the time of his death, and that the said defendant had sufficient proofs of the death of the said Jeremiah H. H. Bennet.

Thereupon the plaintiffs rested.

And thereupon, after the foregoing proceedings, which are made a part hereof, the counsel for the defendant announced in open court to the justice presiding and jury that the only question involved in

his action was whether the insured, the said Jeremiah H. H. Bennet, committed suicide within two years from and after the issuing of the said benefit certificate, to wit, May 26th, 1900; and as it had been proved by the plaintiffs that the said Jeremiah H. H. Bennet died on the 30th day of October, 1900, the only issue was whether he committed suicide; and the defendant, to maintain the issue on its part joined, produced the following witnesses, who gave evidence tending to show as follows:

Dr. JAMES R. NEVITT.

Direct examination:

My name is James R. Nevitt; residence, 618 3d street N. W. I am a practicing physician. I am coroner of the District of Columbia, and occupied that position during the month of October, 1900. During that month I had occasion to call at 729 First street. I was conducting an inquest at the 6th precinct station-house, and I was notified by one of the police officers that a man had died at that number, and I went there and found the body of a man. They said

12 his name was Bennet—Jeremiah H. H. Bennet his name is recorded. When I first went to the house I examined the body and the room and asked questions of different members of the household as to when he was last seen, as to his condition, his habits, etc. I noticed the room in a general way; some articles in the room attracted my attention particularly. There was an empty beer glass on a small table or bureau, I forget which, which had evidently been used recently. I noticed that the glass contained beer and something else—some other liquid which had the odor of laudanum. On the mantel-piece I found a small note book open at a certain page, and on this page was a memorandum. I cannot recall the exact words, but I took a copy of the note that I found on this open page. I left the book there, but I made a copy of what was on the page at which the book was open. I don't remember whether the book was held open by something or whether it remained open by its own weight.

The bed presented no different appearance from one which has been occupied recently by a human being. I made a preliminary examination and a thorough examination of the body. Externally it appeared no different from that of any body. After examining the remains I am not able to form a judgment as to the cause of that man's death from their appearance. A bottle which evidently contained laudanum was handed to me. It had the label of a Baltimore drug store on it, with the word "laudanum." I have not the bottle now. It was handed to me, I think, by a woman in the house. It was a 1-ounce vial, the ordinary size used by pharmacists; it had a label on it. I kept it for a year in my desk, and then it was destroyed. I don't remember whether anything else

13 was handed to me by the lady of the house while I was there. I took a copy from the first page of that memorandum book, the open page. After an examination of this book (indicat-

ing one produced by plaintiff under notice, a pocket memorandum book) I should say this is the book. When I first saw this book it was on the mantel-piece, as near as I can remember. It was open at this page (indicating a certain page of the book offered for identification and marked "Nevitt No. 1").

Cross-examination :

I did not summon a jury to hold an inquest.

Mrs. MELVINA F. MCGRAW.

Direct examination :

My name is Melvina F. McGraw. I reside at 729 First street N. W. I was living at that number during the month of October, 1900. I am a married woman. My husband's name is Christopher H. McGraw. Mr. Jeremiah H. H. Bennet also lived at No. 729 First street during the month of October, 1900. I am not positive of the day he came there, but I think it was on the 23rd of October. He lived there until his death. During the time from October 23d up to the 30th of October, or up to the death of Mr. Bennet, I never had any conversation with him with reference to his life-insurance policy in the National Union. I had no conversation with him at all. Mr. Bennet did not give me this certificate (indicating) or this policy of insurance to send to Mrs. Bennett. I do not know whether he gave it to any other person. I recollect the night that Mr. Bennet came home just immediately prior to his death. I did not hear him come in. His room was located right over mine.

14 It had a bedstead, a washstand, a dresser, and a small table. There was a mantel in the room. The room had a window in it, which overlooked a yard. It was a back room. My attention was called to Mr. Bennet on the morning of October 30, 1900, the day of his death, by my husband going up to call him to breakfast. I should judge it was about half past seven or somewhere around there. He went up, but Mr. Bennet did not come down. I did not go up at the time. I went up to Mr. Bennet's room just after 12 o'clock. My husband called me. I found Mr. Bennet. He was dead, I suppose. You would take him to be dead. His body was on the bed. I believed him to be dead. The room seemed to be just the same as any one's room would be on retiring. The man was undressed. I examined the room after I found Mr. Bennet was dead. I found on the dresser a glass and a beer bottle. That was all I took notice of on the dresser. I found on the mantel a small memorandum book. (Witness examines book handed to her, being book marked "For Identification Nevitt No. 1.") This, to the best of my knowledge, is the same book that I found on the mantel-piece that day. It was open. It was kept open by a small tablet about that long (indicating 3 inches) laying at the top. My husband had gone for some one when I found the book. When he came back he told me he couldn't find the lady—Mrs. Bennet—and I showed him the book with her address in it. Mrs. Bennet came

to the room and came in. I myself had very little to say to Mrs. Bennet. I remember asking her what she intended to do in regard to her husband. The writing on both of these pages (indicating pages identified by Nevitt in the book) is the same writing that was on them when I found the book in Mr. Bennet's room on October 30th, 1900. The book was open at that point. I don't know that I called Mrs. Bennet's attention to it. I did the rest of them. I am not positive about her.

(The question concerning the book being open at a certain point refers to the same pages of the book as identified by the coroner.)

After leaving Mr. Bennet's room I made a further investigation. In the yard, right straight out from his room, I found a bottle. It was a small druggist's vial. It had a label on it. I don't recollect how that label read. I know it was from a Baltimore druggist and said "laudanum" on the bottle; but I don't know what else was on it. The bottle was right out from the window where Mr. Bennet's room was. His room was on the second floor. Directly under the window I also found a small piece of white paper, rolled up that way (indicating), with his name on it and marked "Paid," as near as I remember. That was underneath the window in the yard. I should judge the piece of paper was about that square (indicating about 4 inches); somewhere along there. It was all pressed up—all wrinkled up—as though some one had rolled it in their hand. I gave the vial to the coroner. Mr. Bennet never complained to me about his health. He left the house every day to go to his work. I couldn't say whether he went or not. He was employed in the Government Printing Office. He came to the table every day for his meals, with the exception of one, I think. That was Monday. He didn't work that day. I should say from his general appearance that he was a man in good health. Of course I knew very little about the man myself; I saw very little of him. One time during the time that Mr. Bennet was rooming and boarding at my house I heard a conversation between him and a man by the name of John J. Harley in reference to Mr. Bennet insuring himself. I didn't hear very much of the conversation, because I was busy waiting on the table, but as I came in the room I heard him ask would he pay a policy in case of suicide. That is all I heard. I am not positive how long that was before his death, but I think it was on a Sunday, and he died Monday night or the Tuesday following.

Cross-examination:

There was a tablet something like this (indicating a paper tablet 3 x 4 inches) with the book on the mantel. I didn't examine the tablet, but I know there was a small tablet with the book. I don't remember seeing there either of these books (indicating certain books not offered). So far as I remember there was only the tablet and this book (indicating "Nevitt No. 1"). I didn't examine the tablet at all and couldn't say whether it was like the tablet you indicate or not. I only know there was a small tablet with the book.

When I went up to Mr. Bennet's room I found him in bed in a natural position. He was undressed, as any one would be on going to bed at night. The room was in order, in such condition as it would naturally be when any one goes to bed under ordinary circumstances. I had not known at any other time of Mr. Bennet's having beer in his room. My room is right under Mr. Bennet's. I also have a window opening out into the back yard. There
17 is no room right over Mr. Bennet's. There are only two rooms there over each other; that is in the back part of the house. There is only one window that opens from the main part of the house into that yard. There are no windows in the adjoining houses that looks into that yard. There are no windows on that side by the other house. I do not know how long the bottle had been in the yard. I picked up the bottle myself. It had "Baltimore" on it. I certainly do not know who put it there or who had used it. I do not know the handwriting on the slip of paper (indicating). I do not know how it came there or how long it had been there. I do not know how long the bottle had been there. This envelope you show me is addressed to myself. I should think it was a telegraph envelope. One envelope came to me with a telegram in it, but I couldn't say positively that this is the one. It was one like that, as near as I can remember.

Redirect examination :

My room was right under Mr. Bennet's room—underneath the window of the room occupied by Mr. Bennet. I did not use any laudanum, and neither Mr. McGraw nor myself had it in the house. I do not know any one in the house that used laudanum.

Recross-examination :

I do not know a thing in the world about this bottle except that it was found in the yard.

CHRISTOPHER H. MCGRAW.

Direct examination :

My name is Christopher H. McGraw; residence, 729 1st
18 street N. W.; I am a helper in the Government Printing Office. During the month of October, 1900, I resided at 729 1st street N. W. The lady who has just left the stand is my wife. I knew Jeremiah H. H. Bennet, familiarly known among his friends as Jerry Bennet. I think he came to my house to live about the 20th, between the 20th and the 23d of October, 1900. He lived at my house until his death. While he was living at my house I heard a conversation between him and John J. Harley. We were at dinner. It was about 5 o'clock in the evening, and the rest of the boarders had gotten through. Mr. Bennet, Mr. Harley, and myself were there, and I introduced Mr. Harley to Mr. Bennet. He was an insurance agent, representing the Equitable Life Insurance. He asked Mr. Harley what it would cost him for \$10,000 life insur-

ance, straight life. He asked his age, and stated the amount. He asked him what the terms would be. He said how much he would have to pay, and he said he could pay quarterly at a higher rate; and he says: "Well, what in regard to suicide? Would you pay a claim in case of suicide?" Harley said, "Yes, sir. The Equitable Life Insurance Company would pay it if you were foolish enough to take your life." He says, "Well, it is a good thing for you I haven't got the amount, for I should take out a policy, as that would leave my mother and wife well fixed." This was, I think, on the Friday or Saturday before Bennet's death. While Mr. Bennet was at my house he went to work every day, as near as I know. I saw him there quite a number of days while he was at my house, in the office. He was apparently well. He drank intoxicating liquors while at my house, very near every evening.

19 When he came to my house to engage room and board I had a conversation with him. He did not bring his wife with him. He came to the door and asked me for room and board. I had a room. I told him I wanted to rent it to two people, though. Well, he said, "I am by myself." I says, "I am in the habit of having two men in that room. It don't pay me to have one roomer and boarder, because I would have to charge too much money." "Well," he said, "I will get a gentleman by the name of Leonard to come here and room with me;" and I fixed the price. I says, "What do you want to come and live with me for, anyhow?" "Well," he said, "that don't make any difference to you why I am coming, but if you have got room and board to sell I want to come here." I said, "Very well; come on." So he stated he had a misunderstanding with his wife in regard to \$50 in money that he wanted to pay certain bills that he owned, and for that reason she has refused to give up any more money. That is all. He left his wife for that reason. That is what he told me; yes, sir. I do not know as a matter of fact whether Bennet had that policy of insurance when he was at my house. I can't remember that I had any conversation with Mr. Bennet's wife about his policy in the National Union. Mr. Bennet did not give me at that time any money to keep for him; not to me. I knew Bennet two years. No; I am not what you might call familiar with his handwriting. I think, though, I could recognize it. I think I would know his signature when I see it, but I am not positive.

(Examined by Mr. CHASE:)

Yes, sir; I have seen Mr. Bennet write once or twice, I think, in the evening; about a month before he came to my house, I think. I saw him write his name once or twice; that is all. I have no particular experience in handwriting. I do not claim to be an
20 expert in handwriting.

(Direct examination continued:)

I think I know Bennet's signature.

(By Mr. CHASE:) I am just in the slightest doubt about his signature; that is all.

(Direct examination continued:)

Yes, sir; I have seen that book (indicating the book offered for identification "Nevitt No. 1") in Mr. Bennet's possession. I saw it on the day of his death; on the day I found his body in the room. That was the first time I saw it. I saw it on the mantel, in the room where his dead body lay. It was open. It was kept open by something put across the top of it here to keep it open. This looks very much like the page right here (indicating the pages heretofore offered for identification).

The first time I saw Mr. Bennet on the morning of October 30th was at 7 o'clock. I went to call him to his breakfast. I went in the room to wake him, and he seemed to be very limber and in a perspiration, and the boys in the back room said I shouldn't; and for reasons I was not allowed to call him. I left him alone, thinking he would get up during the day or between that and noon and go to work. I pulled the covers across his feet, so they would be exposed, and perhaps he would get cold and wake up of his own accord. On coming home at noon my wife told me he had not gotten up, and I should go up and call him again. I found him in the same position I had left him in the morning, lying with his feet sticking out from under the covers. I took him by the arm and found he was stiff. I called my wife and told her he was dead. I at once went for a doctor. I was not able to find Dr. Chadwick. Some one then called Dr. Sutor. I then went down on I street
21 to look for his wife. I thought she resided on I street, on account of something said. I got his address and found he lived at 71 H street. I went there and notified Mrs. Bennet. She came over to the house, but she didn't come exactly with me; no, sir. I can't remember that I had any conversation with her. Then I sent some one to notify the 6th precinct station, and Lieutenant Moore, I think, sent a policeman there. Then I went to work. The coroner, Dr. Nevitt, was there at 4.30 o'clock when I came home. They had taken the body—I was not there during the afternoon. The second time I went into the room and found Bennet dead the body was lying across the bed. It was not in the same position as when I first saw it. I pulled it across the bed when I first went in in the morning. No, sir; I did not buy any laudanum. I do not know of anybody in the house who bought any laudanum or who ever used any laudanum.

(Cross-examination deferred.)

FELIX A. VAN RUTH.

Direct examination:

My name is Felix A. Van Ruth; occupation, pharmacist; place of business, 20th & K street-N. W. I was a pharmacist during the

month of October, 1900, in the same place; yes, sir. Yes, sir; I knew Jeremiah Bennet. I was introduced to him in the store by my brother. I can't answer how long my brother knew him. He introduced me to him two days before his death. Mr. Bennet came in the store, and what their conversation at first was I don't know. It was, more or less, in an undertone, and after a bit he asked Lou, my brother, to let him have—he said he had a fuss with the

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old lady and he was tired of this thing; that he wanted to wind his matters up, and right on the strength of that he asked for some laudanum. So just as he asked for the

laudanum—I was behind the prescription case, like the judge is there (indicating), and they were in front. I came around to the front and Lou said to me, he said, "Doc., I want to make you acquainted with Mr. Bennet." So I shook hands with him and I said to him, "Mr. Bennet, I just overheard you ask for laudanum, and you also made a threat about it. What you need is a Turkish bath and a little something to strengthen the stomach up, and after that that will be all the laudanum you need." So he stayed there a short while afterwards and went out. That was in the forenoon. He returned twice that day and each time asked for this laudanum. He was refused each time. I paid no attention to the conversation that occurred the second time, because I got more or less disgusted, and I knew Lou wouldn't let him have it and he couldn't get it from me. They stood talking, and he insisted upon it and I paid no more attention to the conversation. The third time, in the evening, Lou was there. Mr. Bennet insisted upon the laudanum again. Then he returned. If my recollection is right, the first day was a Sunday; the second day was a Monday. He came up to the place of business in a hansom and my brother was taken sick. He wasn't there Monday or Tuesday. He came in and asked for the laudanum. I said to him, I said, "Mr. Bennet, why do you insist upon this?" I said, "I have told you you can't get it and there is no use of you insisting upon it. There is only one way you can get that laudanum from me, and that is to get a prescription from a reputable physician." Knowing his condition and knowing that a physician, after overlooking him, wouldn't give him any such pre-

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scription, I knew he would be totally at sea in getting laudanum. So he asked me where there was any doctor.

I went to the front and pointed out several residences there in the neighborhood where doctors lived, and he went over in the direction of one and went up on the steps. He stood there long enough for the time it would take a servant to come to the door and answer the door from the time he rung the bell, and he came back. I was watching him. I went back of the prescription case and looked out of the side window. He came back, and he said, "The doctor isn't in;" and I says, "Well, I am sorry; perhaps he will be back in a couple of hours." He then insisted upon the laudanum. He said, "I want to wind this thing up. I am tired of it, and want to wind it up quick. Are you going to let me have it?" I says, "No, sir." He turned around in a very threatening manner, and he says, "By (so and so), if I don't get it here—if I have got to go to Bal-

timore for it, I will get it." I says, "You can't get it here." With that he went out, and I never saw him any more until I picked up the paper the following day—I think it was Tuesday I picked up the paper—and there it was in regard to him being found dead. I have stated about what he said; that is about the general conversation. His appearance was the appearance of any man that was laboring under the effects of intoxicants. Yes, sir; I have used the exact language as near as I can. Of course, there was the ordinary run of conversation, you know. I may not have given it exactly. In his first interview with my brother I heard him make a remark as to what he was going to do with himself; that was what brought me to the front. He said he had had a fuss, if I recollect—old lady,

I believe he put it—with the old lady; that he wanted to
 24 borrow some money from her and she wouldn't give it to him, and that he was tired of his life and he wanted to wind matters up; and then, on the strength of that, he asked for the laudanum, and in so doing that brought me to the front; that is about all I remember of these various interviews.

Cross-examination:

I did not sell him any laudanum at my store. I told him he had better take a Turkish bath, because that is about as good a thing as any man who has been drinking for some time—that is about as good a thing as you can give or take. He showed signs of being on a spree. He appeared to me to be a man who had been drinking for three or four days. I do not know anything about his movements after I saw him the last time. I do not know anything about his getting any laudanum at any time or place.

(After Recess.)

CHRISTOPHER H. MCGRAW resumed the stand for cross-examination.

At the time Mr. Bennet was at my house I had about five roomers or boarders. Mr. Bennet paid me for his board while he was there. He didn't pay me until on pay-day, which was on Saturday, the Saturday before he died; he died on Tuesday. Then he gave me \$10. No, sir; I don't think he owed me \$10 at that time. I am insured in the National Union, the same company in which Mr. Bennet was insured. Yes, sir; my wife called my attention to a slop jar
 25 or bucket in the room. It was at the head of the bed, at the side, about that close (indicating). It was where any one could reach it easily. If a drunken man was throwing up in the night he could turn over and reach it. When I went up in the morning and found Bennet limp I did not wake him up. I thought he would be up after a while. I thought he had been on a drunk and was sleeping it off. I think he came in the night before about 12 o'clock. When I pulled him around in the bed in the morning I noticed something peculiar about him, and yet I thought he had come in late, you know, and might be very sleepy and hard to wake, so I let him alone and didn't disturb him. He didn't give me any indications that he was going to wake up at all.

(In answer to a question by a juror :) There is an areaway leading back into the yard from the street and there is a paved walk there, brick, and then the back part is sodded, grass. There is no grass under the window; that is brick. I would think the window of Mr. Bennet's room was 10 or 12 feet from the brick—easily that; more so, if anything. The window was in the second story. If the bottle was thrown from that distance, it would have been broken if it had been thrown on the paved part, but it was found on the grass.

(In answer to a question by the court :) I know where the bottle was found; yes, sir. My wife brought it right in.

The COURT: This must not be considered he knows nothing about where the bottle was found except by hearsay.

Redirect examination :

26 The peculiarity that I noticed about Mr. Bennet when I first went into the room was, as I stated a moment ago, that he was very limber.

JOHN J. HARLEY.

Direct examination :

My name is John J. Harley. I am agent for the Equitable Life Assurance Society of New York. During the month of October, 1900, I lived at 1704 L street N. W. In the latter part of that month I had occasion to visit Mr. McGraw's house, and while I was there I met a man by the name of Jeremiah H. H. Bennet. I had a conversation with him with reference to insurance. I was introduced to Mr. Bennet as the representative of the Equitable Life of New York by Mr. McGraw, and one day, at the dinner table, Mr. Bennet and I got to talking about insurance, and I asked him if he carried any insurance. He said yes; he had some insurance in the National Union. I think I asked him if he had any in any old-line company, and he said no. Then he turned to me and asked me what would be the price of a \$10,000 policy in the Equitable. I gave him an estimate of about the price of a certain kind of policy, and he further stated: "Now, if I make an application and get a policy, if I should kill myself, would it be paid?" I said it would. His manner in talking to me about this business was about the same as any one's would be on a serious subject. I asked him his name and gave him an estimate—not the exact figures; I just gave him an estimate. I didn't have my paraphernalia, I don't think, with me at the time. I asked his age; yes. I remember distinctly he told me he was 29. As near as I remember, after he spoke about the suicide business, I wasn't very persistent in talking any further with the man, but I gave him an estimate. As near as I remember, I think it was about \$275.00 a year.

Cross-examination :

I didn't say I went to the house to talk to him about this matter. I was at the house when the subject came up. Mr. McGraw intro-

duced me to him. We both happened to be at the house at the same time, and Mr. McGraw introduced me to Mr. Bennet as a representative of the Equitable Life, and then we had a consultation about life insurance. I didn't explain to him any particular policy—no, sir. We just had a general talk. He asked me the price of a policy, and I gave him an estimate of a certain policy. He asked me a question and I answered it. He asked me if he would get a policy and would commit suicide if it would be paid, and I said yes. I simply said it would be paid. I referred, of course, to the policy in the Equitable Life Assurance Company. Our conversation was not really a general conversation. It was relative to the Equitable Assurance Society. I talk with a great many people about insurance—yes, sir; that is my business. Mr. Bennet did not seek me out to talk about this, and he did not make any application either.

WILLIAM J. HENDRICKS.

Direct examination :

My name is William J. Hendricks. I am a clerk in the paymaster's office, Government Print. I have been in that position about 13 years. I knew Jeremiah H. H. Bennet, who died on the 30th of October, 1900. I knew him through being employed in the office and having to settle his accounts. My duties in the office were such as to bring me in contact with his signature. I know the signature of Jeremiah H. H. Bennet when I see it. I know it from having taken it on the rolls a great many times. I should say that the signature here on this paper (the application of Jeremiah H. H. Bennet to the National Union) is his signature. (Application admitted in evidence and marked "Hendricks' Exhibit No. 1.") I should state that this is also his signature, "J. H. H. Bennet" (referring to the signature appearing on the page of the memorandum book, "Nevitt's Exhibit No. 1"). The memorandum book was admitted in evidence, and the pages referred to were read as follows :

For identification	McGraw.....	\$10.00
Nevitt No. 1.	Commenced boarding Oct. 23,	
	1900.	
Look through this	List of creditors.	
book for informa-	O'Leary.....	\$30.00
tion concern-	Bonini.....	5.05
ing myself.	Dave Horn (about)....	7.00
J. H. H. Bennet,	Jimmie Shortall.....	15.00
71 H St. N. W.,	Dan. Driscoll.....	4.00
Washington, D. C.	Levatan.....	8.00
	Bicycle.....	12.00

Please send this book to Ella Bennet (who is my wife) at 71 H St. N. W., Washington, D. C. Oct. 28, 1900.

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JOHN C. MACKSEY.

Direct examination :

My name is John C. Macksey. I reside at No. 10 G street N. W. I am a compositor on the Morning Times. During the last week of October, 1900, I was employed in Baltimore, on the Herald. I knew Jerry Bennet. I knew him pretty well—like a man knows most printers. I remember about the time Mr. Bennet died. I have heard the date of his death since I came in here. If I hadn't, I wouldn't have known it. I think it was the night before Mr. Jerry Bennet died that I saw him in Baltimore; yes, sir.

Cross-examination :

No, sir. I do not know of my personal knowledge when he died.

Redirect examination :

I remember the fact of Mr. Bennet's death and the fact that I saw him in Baltimore the day before his death or shortly before—within a day or two.

Here the defendant rested its case, this being all the testimony introduced by and on behalf of the defendant.

30 And thereupon the plaintiffs, in reply to the evidence produced by the defendant and to further maintain the issue on their part, produced the following witnesses, who gave evidence tending to show as follows:

WILLIAM SCHONBERGER.

Direct examination in rebuttal :

My name is William Schonberger. I live at 616 North Capitol street, in this city. I am morgue master, and I held that position on the 31st of October, 1900. I have seen Jerry Bennet in his lifetime several times and spoke to him. I knew him by sight fairly well; not exceedingly well. I saw him after his death at Harvey's undertaker's establishment. There was a post-mortem examination. It was performed by Dr. Glazebrook, deputy coroner. I was there and saw this autopsy performed; saw Dr. Glazebrook perform it. It was at night; I couldn't say exactly the day. I wouldn't like to be exactly sure of that. They told me it was the body of Jeremiah H. H. Bennet, and it looked like the man. People change after their death sometimes. The abdomen was opened and the stomach taken out and taken to Prof. Hird. I took it to him myself. I was

present at the autopsy when the stomach was removed, and I took it to the chemist. It left my sight, but not my care.

(No cross-examination.)

JOHN D. HIRD testified as follows:

Direct examination:

31 My name is John D. Hird; residence, 305 T street N. E. I am inspector and chemist in the health department of the District of Columbia. On the 31st day of October, 1900, a stomach was delivered to me by the witness William Schonberger, who has just left the stand. I made an analysis of the stomach and its contents. I found from the analysis no poisonous substance whatever.

Cross-examination:

I have been the chemist of the District since the fall of 1892, I believe. That would be about ten years. I have made frequent analyses during that time, but not frequently for the purpose of ascertaining or finding traces of poisons in the stomachs of deceased persons. These cases only occur occasionally. I have made in that time probably in the neighborhood of fifteen or twenty such examinations. As near as I can recollect the contents of the stomach, there was very little of it. The stomach, as near as I can remember at this date, was nearly empty. There was a small quantity of fluid; probably two or three tablespoonsfuls. In addition to that, there was probably as much more that had oozed out of the stomach and was in the jar that contained it. The stomach was brought to me in a jar. That is my recollection. I do not know that the fluid that I found in the jar had oozed out of the stomach. I simply found it in the jar. When I made that examination I was looking for anything that might be present. I can't say whether anything was said to me at the time that the stomach was given to me as to

the possibility of death by certain means, but I always inquire at such times whether there was anything of that nature. At 32 the time I made the examination I was not looking for any given poison in particular, although there are certain poisons that reveal themselves more or less by their appearance. For instance, corrosive sublimate or carbolic acid or oxalic acid. There is about their appearance an inflammation of the walls of the stomach in case of arsenic, the odor of carbolic acid, and such things as that. Certain poisons have certain effects upon the structure of the stomach. Laudanum has no particular effect upon the structure of the stomach. I couldn't tell you how much laudanum would be necessary to kill a healthy man. I couldn't tell you how long laudanum remains in the stomach after it is taken. I found no traces of laudanum in this stomach. I suppose in time laudanum would be absorbed into the system. I am not a physician and I

don't know. I am a chemist. I found no trace of laudanum in this stomach. I do not know from that fact whether laudanum had been taken into the stomach and absorbed into the system.

Thereupon the court, of its own motion, in the following opinion directed the jury to return a verdict for the plaintiffs :

The COURT: Counsel for the defence in this case have been commendably frank. They have done what should always be done, but we do not always do it. They have been perfectly frank in stating their evidence in this case and in saying that the burden was upon
 33 them in sustaining that evidence. Their claim is that death was due to suicide, and of course the burden of proof is upon the defence to show that it was suicide. To sustain that they have brought evidence which would tend, and strongly tend, to indicate that defence as being a proper one.

They have shown in this case that the deceased a few days prior to his death inquired in respect to additional insurance, inquiring as to whether or not that insurance would be payable if suicide took place. In other words, if it would be paid if he killed himself.

In addition to that, they have shown by testimony which has not been attempted to be attacked that only a few days before he had gone into a drug store in this city some three or four different times and endeavored each time to secure from the druggist laudanum for the purpose of killing himself—or stopping the trouble that he was in, as he expressed it—and that if he could not get it there he would go to Baltimore to get it.

He was discovered in Baltimore a day or two, as the witness said, before his death. This bottle was found below his window, with laudanum marked on it and with the name of the druggist in Baltimore. In addition to that, it was discovered in his room after his death that he had opened the little memorandum book offered in evidence as being found upon the mantel-piece, with the leaves pressed down and kept open by another memorandum book of some kind, and that upon the leaves of that book were the words telling who he was and where his wife was to be found and the list of his creditors.

Now, this evidence certainly would tend to support the view taken by the defence in this case. But it tends to what? Of course,
 34 it tends to prove that a man intended to commit suicide, if the jury believe all this evidence.

But suppose that instead of the poison or laudanum it was suggested that he had gone into a place where revolvers were sold, and that he had bought a revolver and had bought ammunition and had told the man from whom he had bought it that he intended to kill himself; that he likewise had applied for insurance with the intention of killing himself, provided his insurance would be paid if he did commit suicide. Suppose he was found dead the next morning in his room, with a revolver lying beside him with empty shells.

Would that prove that he committed suicide? Is not that the

very foundation of the suit—the very fundamental thing upon which the case is based? Must you not show that he died from violence in the case just suggested? Must you not show that he had a bullet wound in his head which produced death, or a bullet in his heart which produced death; and, having shown that the cause of death was violence—that is, either the bullet wound in his head, his heart, or some vital organ—then the other facts come in, and the court instructs the jury that if they find from this evidence that he died from the effects of a bullet wound, &c. But it must be remembered that even if you showed that he died from a bullet, it would not be a presumption of suicide, but, on the contrary, would be a presumption of accident. That is the only law laid down in all the books. Therefore, having shown that he had died from the effects of violence, then the other evidence would come in, and it would be for

35 the jury to say, having shown the *corpus delicti*—if I may use that expression in this case—having shown that he had died from violence, then the fact comes in that he bought this revolver and intended to shoot himself, and all the rest of the evidence would, of course, be relevant and would go to the jury. But if it was not shown that the man was shot, how could the jury possibly infer that he had killed himself by shooting?

So it is with this case. All that is proved in this case is that the man died or was dead. There is not a *scintilla* of evidence—not even a suggestion of evidence—that he died from poison. It is the contention of the defence that he poisoned himself, and yet there is no suggestion in this case to show that he died from poison. Therefore, until you show that he died from some violent cause or some cause other than pure natural causes, there is nothing upon which you can base your circumstantial evidence.

It is rather a peculiar fact in this case, likewise, that not only has the defence been unable to show that he died from poison or from what he died, but there is no evidence to even show that, if he took laudanum, laudanum was poisonous. The court cannot take judicial notice of the fact that laudanum will kill if it is taken. How, then, can the court say to the jury that they can find in this case that this man died from suicide by having taken laudanum, when it has not been shown to the jury that laudanum is a poisonous drug? It is not poisonous in certain amounts. What is a poisonous amount?

36 So in this case we have not only the fact that it is not shown that he died from poison at all, but it is not even disclosed from what cause he died. It has not even been shown that laudanum is a drug which would poison if he took it.

Under the circumstances of this case, gentlemen, it would have been an error to have permitted this case to have gone to the jury, even under consent of counsel on both sides as to the law. Taking that view of the case, and not having a *scintilla* of doubt about it, I feel forced to suggest to counsel exactly the view I have taken here now and to say that there is no evidence in this case from which the jury could find this deceased died from the effects of poison.

administered by himself. That being the only question in the case, the rest being admitted, his death being admitted, the payment of the dues being admitted, and so on, and the amount under the policy being admitted, as I understand, there is nothing left but to direct the jury to find a verdict for the plaintiff in this case for the amount of the policy, whatever it is.

Of course you can take an exception, gentlemen, to the instruction that there is no evidence in this case to show that the deceased died from the effects of poison.

Mr. KAVANAGH: Of course we do that. We expected to except to the instruction.

The COURT: What I mean is that you do not care for any technical going to the jury on the question of other facts.

Mr. KAVANAGH: I wish to pursue whatever course will serve to make up a proper record under practice here. That is all.

37 The COURT: You except to the decision of the court that there is no evidence that the deceased died from suicide. What is the amount of the policy?

Mr. JEFFORDS: \$3,000, with interest from the date mentioned in the declaration—I think the filing of the suit.

(The jury thereupon, by direction of the court, rendered a verdict for the plaintiffs for the sum of \$3,000, with interest from the third day of January, 1901.)

Counsel for the defendant thereupon noted an exception.

Be it further remembered that the exception taken by counsel for the defendant to the ruling of the court to the instructions of the court to the jury upon the whole evidence to return a verdict for the plaintiffs, as hereinbefore set forth, were taken by counsel for the defendant, as hereinbefore set forth, then and there before the jury retired; and said exception was then and there duly noted upon the minutes of the justice presiding at the trial, and counsel for the defendant then and there prayed the court to sign and seal this their bill of exceptions, and at the request of said counsel for the defendant the same is accordingly signed and sealed and made part of the record in this cause, *nunc pro tunc*, this 5th day of June, 1902.

HARRY M. CLABAUGH, *Justice*. [SEAL.]

38 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 37, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44405, at law, wherein Ella J. Bennet *et al.* are plaintiffs and The National Union, a corporation, is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, in said District,
Columbia. this 17th day of June, A. D. 1902.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1226. The National Union, a corporation, appellant, *vs.* Ella J. Bennet *et al.* Court of Appeals, District of Columbia. Filed Jun-19, 1902. Robert Willett, clerk.

